

Development Review Process:

Institute Methods for Dispute Resolution Prior to Resorting to the Courts - While Rockville currently allows citizens to request a review of a decision, this review occurs in parallel with the timeline established by state law for submitting a petition to the courts. Effectively citizens cannot wait for the review of a decision without giving up their right to seek redress in the courts. Further, the review is conducted by the same body that issued the decision, which precludes an independent assessment of the merits of citizens' claims. Most citizens felt that the process, as it currently exists, does not afford them a way to resolve their issues without hiring attorneys and incurring significant expense.

Accordingly we recommend the institution of dispute resolution methods as follows:

Create an Inspector General or Ombudsman reporting to Mayor and Council – An independent person/body with the authority to investigate the approval process and preliminary decision of an approving authority, if evidence presented by citizens indicates that the process is seriously flawed.

The staff supports an alternative process such as the ADR mentioned below. However, the Inspector General suggestion below is not an appropriate role for a staff position. If the approving authority is not following the process correctly, the City Attorney or the Mayor and Council should correct this. If the staff is not following the process correctly, the Director or City Manager should correct this. If "the process is seriously flawed" the Mayor and Council should change the process in the code.

Institute Alternative Disputes Resolution (ADR) Procedures - These procedures allow for an independent person/body to hear both sides of the case, apply mediation/arbitration methods and recommend a resolution that may or may not be binding. Alternative dispute resolution lends itself well to virtually all types of disputes, including the following: Property, Real Estate, and Land Use including land use/zoning. For further information refer to Exhibit 3.

The staff agrees and supports a dispute resolution process to be available to either side as an alternative to or prior to litigation. The City Attorney should be consulted on how this could be instituted given the 30-day appeal period in State Code.

Revise development review process to include a step that allows citizens to engage in Dispute resolution. One possible approach follows:

- **A Preliminary Decision would be issued by the Deciding Authority prior to the Final Decision.**
- **Citizens would be given a specified time to apply for dispute resolution in the period between the Preliminary and Final Decisions.**

Dispute resolution is typically voluntary by all parties and takes place after a decision is rendered. It is unclear how this would work prior to a decision being made. City Attorney should be consulted to determine if this usurps the authority of the boards and commissions, and whether they can make "preliminary" decisions. Or, in lieu of dispute resolution (or in addition), perhaps professional facilitators from a local university can be used to assist the commissions or board in resolving difficult projects.

Create a Legal Defense Fund for Citizens - Many communities around the country have created legal defense funds to offset the wide disparity between the resources available to developers and those available to average citizens. A legal defense fund provides a way to assure that citizens can operate on an equal playing field. Exhibit 4 provides case histories of other communities that have created Legal Defense Funds.

This should be a Mayor and Council decision.

Rewrite the City's Development Review Processes to include Citizens – In the current processes citizens are only shown as recipients of the actions of others. These processes need to be revised to include citizens as active players and show their roles at each step of the process.

The current process was outlined by the RORZOR Committee and vetted through the Planning Commission and adopted by Mayor and Council. The Mayor and Council may initiate a text amendment at any time, with direction on the changes desired. See details on the remaining items.

Review the Fees Paid by Developers to Determine if they Reflect the "True Costs" Incurred by the City.

This should be a Mayor and Council decision.

Review and Potentially Revise Special Exceptions – This last recommendation is not strictly within the mission of the Communications Task Force, but it was raised so many times by the citizens that we interviewed that we thought it was worthy of being brought to your attention.

As the findings show, citizens believe that special exception applications need to be "special" and not routine approvals. Many suggested that the portion of the Zoning Ordinance on special exceptions needs to be reviewed and revised to better protect and preserve neighborhoods. They felt that both the zones in which special exceptions are allowed and the maximum parameters allowed, such as height, should be evaluated.

The staff agrees and supports this suggestion. The uses (permitted or otherwise) are virtually the same in all of the residential zones. This seems unusual given the wide range of residential zoning districts and lot sizes. The non-residential or institutional uses within all residential zones should be re-evaluated to distinguish between uses that can be reasonably developed to be compatible with existing single-family homes with an established pattern of smaller lot sizes vs. those that should occupy larger lots (i.e. R-200, 400). Some of the mixed use zones (MXT, MXNC and possibly MXC) should also be reviewed on the same basis.

For example, is a hospital, nursing home or private club compatible in any residential zone just by virtue of the size, employees, visitors, deliveries, etc. that typically are part of such a use? Is it feasible to design one to be compatible if located in a large lot zone through a special exception process? Could a charitable institution occupy an existing house or design an office to blend into a neighborhood and accommodate needed parking in a larger lot size zone but not an area developed as R-60 or R-90? Currently, the code designates all of these uses in all residential zones as special exceptions. Changing some of these uses may cause some existing businesses to become non-conforming but eliminating them from the code would prevent creation of new ones.

Regarding the height waiver for Senior Adult and Disabled Housing: this should also be reevaluated for all or some zones based on the typical lot sizes and existing development in those zones. As mentioned above, properties in the zones with larger lot sizes may be able to design a compatible building with more land and buffers, and may be more in character with a large lot zone than a small lot zone.

Specific Recommendations for Changes to the Development Review Process

Pre-Application Phase

Notification of Citizens- They need to be brought in from the beginning. As soon as a developer files a pre-application, 15 days for example, citizens should be notified of the pre-application including an overview of the location, intended use and size of the proposed project; information on the availability of citizen training on the approval process and date of the Pre-Application Area Meeting.

This is possible, however, the Mayor and Council or the community should decide whether it wants the Area Meeting before the DRC conducts their pre-application meeting – or after. See below for staff suggestions on how the process could be changed – incorporating some of these, some of Council member Pierzchala’s ideas and based on one year of experience with the code.

While we do not recommend designing the process for the worst projects or the applicant that does not want to cooperate, there are changes that could improve some of the primary criticisms of the current code.

The intent of these steps would be to insure that the pre-application area meeting is conducted sufficiently in advance of the DRC and the application submission, and that these meetings are attended by staff, and that minutes are taken by an objective source. In addition, it increases public education and resources to become more effective participants in the process. Additional details and code amendments would be required if the Mayor and Council are interested in such changes, with the concept including the following changes:

1. The Pre-application Area Meeting should occur prior to the Pre-application DRC Meeting.
2. The Post-application Area Meeting is attended by City staff to answer questions but is conducted by the applicant.
3. Minutes of all Area Meetings are taken by an objective outside source and paid for by the applicant.
4. The notice of filing should include the date of the DRC meeting.
5. Notices should include: the brochure (already implemented), information on the Planning Academy, anticipated timeline, location map, site plan if appropriate, and a brief project description (i.e. 3-4 pages).

Note: some of the remaining suggestions seem to be unrelated to the Pre-application phase. The intent should be clarified and the staff could reevaluate their responses if desired.

The notification should be written in user-friendly text (i.e. plain English).

Agreed

The notification should be prepared and sent by the City. It should be funded by the developers.

If the City prepares the notices, additional staff will be required (i.e. replace the administrative position that was cut in the budget). Funding for a “typical notification process” would be reflected in the application fees.

The area of notification should to be expanded to reach a wider group of citizens- the Zoning Ordinance needs to be modified accordingly.

This can be included in a text amendment to the code based on direction from the Mayor and Council for the desired distance. The radius used by the City for mail notification is quite broad (to properties within 750-1,500 ft and associations within 500 ft) compared with the County and City of Gaithersburg requirements. The County requires notification of "Adjoining and Confronting" property owners; in addition, associations within a 1-mile radius of the property are notified. Gaithersburg requires notification to the "Petitioner, Owner of the Property and Abutting and Confronting property owners" for Board of Appeals items (Special Exceptions and Variances). Planning Commission items (other than consent or minor amendments which require 2 days) are placed on a tentative agenda which is mailed 9-days prior to the hearing to "abutting and confronting" property owners and Parties of Record.

Training for Citizens

Training sessions should be available to teach citizens about how the development approval process is conducted by the City and how they can effectively engage.

The Planning Academy is available online on the Channel 11 – Video on Demand screen.

These should be available upon request from citizens.

The Planning Academy presentation is available on request and has been repeated for the two other groups who requested it. Notice of this opportunity has been emailed to all neighborhood and civic associations through the Neighborhood Resources Office, and announced at several commission, board and Council meetings. Neighborhood Resources will continue to periodically offer presentations to neighborhood associations and coordinate with staff and board members to arrange the presentations.

Citizens would learn of the availability of these training sessions as part of the notification of a pre-application submitted to the City.

Good idea; this will be incorporated into the brochure at next printing and has been added to the back of the agendas for board and commission meetings adjacent to the Video on Demand notice.

This training course should be specific to the Approval Process that is required by the Zoning Ordinance (e.g. Level II Site Plan or Special Exception).

Does this mean a different training course is desired for each type of application? The differences between the types of applications doesn't seem to warrant the cost of producing different courses. More importantly, there is no substitute for personal communication and Q&A to explain the nuances of the process and the various codes and departments that are involved. This is not only a CPDS and Zoning Code issue –there are many other codes and departments that are involved in every application.

The course should be available on-line. City staff should be available to hold follow-up meetings with citizens to clarify issues in the training session.

The course is available online and the staff is available for follow up with individuals or groups – in person and/or on the phone.

The training course should include specific examples of the findings required by the Zoning Ordinance.

All or most staff reports include findings as required by the ordinance. Examples of previous cases could be included in the next course.

Stakeholders Meetings

A joint meeting of stakeholders (i.e. Citizens, developer, City staff) should be conducted to layout the process, events, schedule and mechanism for sharing documents and modifications to the application as soon as the pre-application is filed.

This is the purpose of the pre-application area meeting and the instructions for this are included in the Development Review Manual, and online.

A community benefits agreement, or CBA, is a private contract between a developer and a community coalition that sets forth the benefits that the community will receive from the development. CBAs ensure that development is equitable and benefits all members of the community, eventually contributing to stronger local economies, livable neighborhoods and increased public participation in the planning process. CBA's are strongly encouraged for implementation for all infill-development.

The City Attorney should respond to this.

Development Review Committee (DRC) Meetings

(Note: this is listed under the Pre-application section but we are assuming this is meant to apply to the entire process)

Include citizens in meetings of the DRC and notify them of the DRC meetings scheduled for their project.

The City Attorney should respond.

Meetings of the DRC should not be conducted until after the Pre-Application Area Meeting has been held.

Should applicants be discouraged from meeting with staff to get information on proper process and substantive code and design issues? This may make the non-complex, non-controversial projects seem worse. If the pre-application area meeting is required to be first, the ordinance must be changed. See attachment for possible alternative process.

Modifications to an application must be given in a timely manner to all interested parties. The schedule established in the Stakeholders meeting will be modified to reflect the additional time required by staff and citizens to review and understand the modification.

The current process typically requires 30 days for a modified plan review. This is for circulation and review by all departments and drafting conditions and the staff report prior to being heard at a public meeting. What timeframe is suggested by the Task Force?

Post Application Phase

Interaction with City Staff and Boards and Commissions

Citizen testimony must be included in the analysis provided to the Decision Authority. Currently the timing of staff reports does not allow citizen testimony to be part of this analysis. In the future staff reports should be based on input from all sources. An alternative approach for including citizen testimony is to create a hearing examiner with responsibility to evaluate testimony provided by all parties-developers, citizens and staff.

The staff report format has been modified with a section titled "Public Response" to highlight and acknowledge written or email comments received and give a general overview of the substance

of the comments. These will continue to be attached to the staff reports – and will include previous comments received on the pre-application case which is technically a different case number, fee, for tracking purposes.

The required notice period is typically 14 days prior to the public meetings and the Planning Commission briefbook is distributed 12 days prior to the meeting, the HDC and the BOA briefbooks are distributed 7 days prior to the meeting. As a result of this timing of the briefbook deliveries as compared to the timing of the public notice, there is little public comment received in advance of staff report preparation.

Regarding a Hearing Examiner, the City Attorney can provide additional information if the Mayor and Council wish to pursue such a course. These are typically used in jurisdictions with high volume caseloads - instead of boards and planning commissions. In most setups, the staff provides a report to the Examiner who provides a recommendation directly to the Approving Authority.

Finally, regarding roles and responsibilities. There is a need to clarify the legal and professional role of the staff vs. the Planning Commission and the Board of Appeals. Perhaps an outside advisor from one of the many planning or law schools or associations may be able to assist in a better understanding of these roles and responsibilities.

The Task Force report indicates that the staff report “does not allow citizen testimony to be part of this analysis”. The staff does analyze applications for consistency, compatibility and compliance based upon the Master Plans, the codes in effect and prior precedent in similar situations. The code and plans are the embodiment of the city’s values and official policy. The staff is supposed to remain consistent and apolitical, and not base its decision on individual or incremental comments from the public. However, the reason that Planning Commissions and Boards were established was to receive such testimony collectively and with all parties in context of a public hearing. The law gives them discretion to apply the stated code or policy differently in a given situation. By law, the commissioners and boardmembers have more discretion, where the staff’s perspective is very narrow and supposed to be based upon the current plan and codes. Further, the staff must be careful to avoid requiring conditions that are not mandatory or are not consistent with requirements in similar situations, whereas the board/commission may take additional latitude and consideration of the public hearing testimony.

Evaluations will be developed on a factual basis.

They have been and will continue to be.

When conflicting testimony is provided “ground truth” must be determined. When alternative views are presented by developers and citizens, an evaluation needs to be conducted to accurately and factually assess the benefits/detriments of the alternative views.

Agree. This is the appropriate role for the boards and commissions.

All Decision Criteria must be addressed by Boards/Commissions. All criteria specified in the Zoning Ordinance must be evaluated by the Boards/Commissions with decision authority and documented in the written decision issued by the Board/Commission. The staff should provide analysis and pertinent information to the Board/Commission to assist them in their evaluation.

Agree. This is done now. The City Attorney will have to opine whether “all” criteria in the Zoning Ordinance must be included in the written decision issued by the Board/Commission vs. documenting the findings. Beyond the staff report, the level of staff assistance is up to the discretion of the board.

The focus of staff reports should be on assembling all of the information needed by commissioners to be able to thoughtfully and comprehensively weigh all issues that affect a decision on approval. It is the responsibility of the decision authority to integrate this information and reach a decision.

Agree. This is done now. This is why the process, universally, is set up as it is - to have the public hearing as the focus of the decision process. As has been noted in previous public and private meetings and the Planning Academy, the staff's report should be based upon the adopted codes and Master Plans, and professional planning, engineering and forestry practice. The staff report is but one layer of information and is intended to inform the commission of the compliance issues and other professional engineering and planning advice. The staff report is not intended to be the sole basis of the commission's decision. By law, the boards and commissions have greater discretion than the staff – and they are empowered to make their decision and impose conditions based upon the testimony heard and received as part of the public record.

Staff reports should be available to all interested parties 15 days before the decision meeting of an approving authority. Citizens' comments must be included in the evaluation presented.

This is possible, however, as noted above, due to the timing of the briefbook deliveries as compared to the timing of the public notice, there is little public comment received. Distributing briefbooks earlier may further reduce advance comments received but certainly could be coordinated so that the notices deadline and the briefbook distribution are both 14 days. An alternative could be to leave current timeframes as is except give 30 days for Project Plans. Should board/commission members be consulted on this issue?

It is recommended that the time constraints imposed on testimony from citizens be changed.

Current time limits given to citizens are unreasonable. Where citizens have valid information to present they should be afforded adequate time to do so. It should be the judgment of the members of the Board/Commission that guides the amount of time given to citizens.

This is up to the Chairs, members and the Rules of Procedure of each board/commission.

Cross Examination - Right to Question Others at a Public Hearing

Citizens as well as the developer should be allowed to ask questions of any individuals who testify at a public hearing.

Per the City Attorney, this is already allowed by Maryland law.

Replace Courtesy Reviews with formal meetings since recommendations emanating from them are regarded as authoritative by the Decision Authority and often have significant impact on the decision issued.

The term Courtesy Review is a term of art and used in the ordinance. The HDC has taken public testimony even for those Courtesy reviews that are requested by the applicant (and not required). In those cases where the HDC recommendation was either required or requested by the Planning Commission or the Board of Appeals, public notice and public testimony was provided just as for a Certificate of Approval. In those cases where a recommendation was requested or required by another board/commission, a written recommendation was provided for the record.

Area Meetings

Revised guidelines for conducting an area meeting should be developed. It is the goal that everyone hear the same commentary and hear the same questions and answers.

A series of meetings with individuals should not count as an area meeting.

A charette-style meeting should not count as an area meeting.

A series of meetings with individuals does not count as an area meeting. A charrette is typically a very hands-on, positive and effective way to design or alter a design of a project; why should this not count as an area meeting if the applicant and stakeholders wanted to interact at that level of detail?

The area meeting should begin with an overview of the development approval process and information on training that is available to citizens.

Agree. This is included in the guidelines for an area meeting; the city will revise the brochure or provide additional information about the availability of training.

A member of the City staff should act as impartial moderator and minute taker. At the Post-Application Area Meeting if information provided by the applicant is in conflict with information in the application or recommendations of the DRC, the moderator should advise citizens of this discrepancy.

It is suggested that the new process include the staff attendance at the post application area meeting but not the pre-application area meeting (see attachment for suggested sequence). Other DRC members should also attend. The developer should run the meeting according to the guidelines so that schedule, training, process overview, etc. is covered. The overall intent is for the developer to present his application and entertain questions and changes, if suggested. The staff should be present to respond to questions, provide technical clarifications and monitor that the intent of the meeting is met and should not be moderating or taking minutes.

A neutral or third party should take minutes and a copy of the minutes should be provided to the City for the file.

Any reasonable requests for information from citizens should receive a response from the applicant within 7 days. Failure to comply should result in delays of the schedule.

Agree that 7 days or “a mutually agreed upon timeframe” if complex information or site plan revisions are necessary.

Copies of the materials used in the meeting should be available to anyone. These can be in digital form using commonly available file formats such as PDF files.

Applicants are already required to provide copies of meeting materials to the City for the files. And all materials in the files are available for public review. Format should be decided at the meeting based upon the type of information being discussed. Not everyone likes digital format and certainly not everyone can print out color or site plan documents, especially if they are large-size drawings.

To ensure transparency full identification of all attendees should be required.

Not sure what is meant here; it is assumed that most people would want to identify themselves.

Mechanisms for Citizen Communications from beginning to end of approval process

Create a log of Citizens questions and a tracking system to assure responses.

Please clarify the intent. If the intent is to document every phone call and email for every application, that does not seem feasible or an efficient use of funds. It would not only be costly, it would force all questions to be routed to one person (in each of the three DRC departments), thereby slowing response times considerably. These cases are very complex and often technical questions taken out of context, or those that apply to one case would rarely, if ever, apply to another use or site.

Create a tickler list on the internet for each project. Citizens may elect to be on the tickler list for any project that they choose. The tickler list would include schedule information, document submissions, document availability and other pertinent information.

The Development Review webpage documents this type of information. We have already been in discussion with the PIO office to determine the feasibility of sending emails when the site data changes. This is under discussion.

Availability of Documents, such as applications, staff reports, DRC minutes, should be available to citizens on request, mostly through on-line sources. However, for complex site plans which are very difficult to read on-line, a specified number of hard copies should be available to citizens for their use and retention. These should be provided by the applicant at no cost to citizens.

Most of these materials are already available online through the Development Review webpage. Although the one page application form is not posted, the applicant's project description and site plan are posted. The application form could be added, if desired. All case-related files are open and available to the public on request (by practice and by law). Copies are available at no cost upon request. As noted in previous discussions with the Mayor and Council, the Task Force and others, the feasibility of putting all application-related documents online is not effective or efficient. DRC minutes are in the file and available for review and copies. Given the number of cases that go through with little calls for that level of detail, is it worth the resources to scan and post that information for all cases, or provide it upon request with the hope that the staff will also be able to answer questions that the citizen may have. Staff reports are available on line with the agenda for each board and commission.